IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3656 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATHAN JAMALKHAN MOHMMEDKHAN

Versus

DIRECTOR OF AGRICULTURE

Appearance:

MR DM THAKKAR for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/01/2001

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioner, a driver in the office of the respondent came to be dismissed from the services on

proof of misconduct having misused the bull-dozers in his custody providing service thereof to 3 Khatedars of Mota Bhadva and Tumpni of Dwarka Taluka and misappropriated Rs.680/= received by way of service charge from them and debiting the expenditure towards the remuneration of the daily wages paid to the casual employees to Government Account. This order has been challenged by the petitioner before the Gujarat Civil Services Tribunal, Gandhinagar and the appeal was also dismissed hence the petition.

#. The learned counsel for the petitioner firstly contended that there is delay in issuing of the charge sheet to the petitioner and as a result of which the entire inquiry proceedings are vitiated. It has next been contended that the case against the petitioner is the outcome of the malice of the officer against him. Lastly it is contended that for the proved misconduct punishment of the dismissal given to the petitioner is highly excessive and disproportionate to the guilty proved against him.

The learned counsel for the respondents supported the order passed by the respondent No.1 and Gujarat Civil Services Tribunal, Gandhinagar.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. It is not the law that where in case there is a delay in service of the charge sheet only on that ground the entire proceedings or the order of penalty vitiates. Each case has to be decided on its own merits. Leaving apart the fact that in this case there may be delay in issuing charge sheet to the petitioner, this grievance has not been made by him in the departmental inquiry and even before the Tribunal in the appeal. The very fact that the petitioner has not made this grievance in his defence to the charge sheet goes to show that this alleged delay was not considered to be fatal or depriving the petitioner any of his right of defence. This contention raised by the learned counsel for the petitioner is devoid of any substance and merit. So far as second contention raised is concerned, it is suffice to say that the learned Tribunal has not committed any error or illegality, and for cogent and satisfactory reasons and grounds it has not accepted the same. It is not in dispute that the letter of Shri Ayar, reference of which has been made in the arguments was produced by the petitioner in the inquiry after the completion of the matter. This contention is also devoid of any merit and

substance.

#. So far as the question of quantum of punishment is concerned, it is suffice to say that this ground has been raised before the Tribunal and the Tribunal has not considered it to be a fit case where the interference has to be made with the order of the disciplinary authority awarding the penalty of dismissal of the petitioner from services. It is a case where the petitioner has misused the bull-dozer, Government property for his own benefits. Not only this he has debited the expenditure towards the remuneration of the daily wages paid to the drivers of bull-dozers to Government Account for his own benefits. Not only this he has taken the money from Khatedars which is nothing but a money which would have been gone to the coffer of the State Government and thus it is a clear case of misappropriation of the Government money. In a case where in the departmental inquiry charge of misappropriation of the Government money is proved against the delinquent officer the minimum penalty should have been his dismissal or removal or termination from the services. Here fruitful reference may have to the latest pronouncement of their Lordships of the Hon'ble Supreme Court of India in the case of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and Others Vs. Secretary Sahakari Noukarara Sangha and Others, 2000(7) SCC 517. I fail to see any justification and merits in the contention of the learned counsel for the petitioner that money does not belonging to the State Government. This money is collected by the petitioner by using the Government property and naturally it is the money of the Government. Otherwise also using of the property of the Government by an employee for his own benefits is equally a very serious misconduct and on proof of which the minimum penalty should have been the dismissal or removal from the services. The petitioner has used the property of the Government for his own gains. Not only this by debiting wages paid to the the drivers to the account of the Government he has put to loss to the Government. It is also equally a very serious misconduct. It is a grave and serious misconduct which is proved in the departmental inquiry and rightly the petitioner was ordered to be dismissed from the services. This court sitting under Articles 226 or 227 of the Constitution of India has very limited powers of judicial review in the matter of the quantum of punishment to be awarded to the delinquent by the disciplinary authority for the proved misconduct. Reference here may have to the following decisions of the apex court :-

(i) State Bank of India Vs. Samundra Kishore, JT 1994(1) SC 217.

(ii) B.C.Chatterjee Vs. Union of India, JT 1995(8) SC 65.

In the facts of this case the penalty of the dismissal given to the petitioner on proof of misconduct of misappropriation of the Government's money cannot be said to be shocking to the conscious of the court. The Tribunal has considered each and every aspect of the matter on this question and I am in full agreement with the finding recorded by the Tribunal on this question.

#. In the result, the Special Civil Application fails and the same is dismissed. Rule is discharged. Interim relief, if any, granted earlier stands vacated. No order as to costs.

(S.K.Keshote, J.)

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